

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

DEFENDANT WALMART STORES EAST I, LP'S NOTICE OF REMOVAL

Defendant Walmart Stores East I, LP (“Walmart”), with full reservation of all defenses, objections, and exceptions, including but not limited to service, jurisdiction, venue, and statute of limitations, removes the above-captioned matter from the Circuit Court of Buchanan County, Missouri, to the United States District Court for the Western District of Missouri, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. In support thereof, Walmart states the following:

THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

1. Plaintiff Jeanne Graham (“Plaintiff”) filed this lawsuit against Walmart in the Circuit Court of Buchanan County, Missouri on or about April 14, 2020.
2. Walmart was served with process on April 15, 2020. Walmart has not yet answered Plaintiff’s Petition.
3. As required by 28 U.S.C. § 1446(a), a complete copy of all records and proceedings from the Circuit Court of Buchanan County, Missouri, are attached as Exhibit A.
4. This Notice of Removal is properly directed to this Court pursuant to 28 U.S.C. § 1446(a) as it is the United States District Court embracing the Circuit Court of Buchanan County, Missouri, where Plaintiff’s Petition is currently pending. *See* 28 U.S.C. § 96.
5. Without waiving any objection to service, this Notice of Removal is timely filed

pursuant to 28 U.S.C. § 1446(b), because the same has been filed within thirty (30) days of service on Defendant.

6. Pursuant to 28 U.S.C. § 1446(d), Walmart files written notice of this removal with the Clerk of the Circuit Court of Buchanan County, Missouri, where Plaintiff's Petition is currently pending. A copy of this Notice of Removal and the written notice of the same have been served upon Plaintiff.

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS

7. Upon information and belief, Plaintiff is a citizen of the State of Missouri.

8. Walmart Stores East I, LP is the name under which Walmart Stores East, LP, transacts business in Missouri, but Walmart Stores East I LP is not a legal entity. The legal entity, Walmart Stores East, LP, is a Delaware limited partnership, of which WSE Management, LLC is the general partner, and WSE Investment, LLC is the limited partner. The sole member of WSE Management, LLC and WSE Investment, LLC is Walmart Stores East, LP, an Arkansas limited liability company. The sole member of Walmart Stores East, LLC, is Walmart, Inc., a Delaware Corporation. The principal place of business for all legal entities and members mentioned is Bentonville, Arkansas. Accordingly, Walmart Stores East LP is a citizen of Delaware and Arkansas for the purposes of determining this Court's subject matter jurisdiction. *See* 28 U.S.C. § 1332(c).

THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

9. Where a plaintiff has not specified a specific amount of damages in his state court petition, the removing party "must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000." *Miller v. CEVA Logistics*, 2008 U.S. Dist. LEXIS 2116, *2 (W.D. Mo. 2008) (quoting *In re Minnesota Mut. Life Ins. Co. Sales Practices Litig.*, 346 F.3d 830, 834

(8th Cir. 2003)). Plaintiff may only defeat removal by showing “to a legal certainty that recovery cannot exceed \$75,000.” *Miller*, 2008 U.S. Dist. LEXIS, at *3 (emphasis added).

10. To meet its burden of proof, a defendant seeking removal must present specific facts or evidence, which may include “an extensive list of serious and disabling injuries suffered by the plaintiff.” *Id.*

11. Plaintiff’s Petition alleges in part that plaintiff, sustained “injury to her left foot and back.” *See Exhibit A, Petition.* Plaintiff had surgery to her patellar fracture. *Id.* at Paragraph numbered 13. Plaintiff alleges her injuries are permanent and progressive and disabling. *Id.* at Paragraph numbered 13. Plaintiff also alleges future medical expenses and great pain and suffering, and mental anguish. *Id.*

12. Upon information and belief, Plaintiff’s alleged injuries place in dispute medical and other damages in excess of \$75,000, exclusive of costs and interest.

WHEREFORE, for the foregoing reasons, Defendant Walmart Stores East I, LP removes this action from the Circuit Court of Buchanan County, Missouri, to this Court pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

Respectfully submitted,

BAKER STERCHI COWDEN & RICE LLC

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ATTORNEY FOR DEFENDANT
WALMART STORES EAST I, LP

CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of May, 2020 a copy of the foregoing was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send electronic notification of filing to all counsel of record.

Jeffrey Blackwood,
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St. Joseph, MO 64502
ATTORNEY FOR PLAINTIFF

s/ James R. Jarrow